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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	IB Docket No. 95-91
	)	GEN Docket No. 90-357
	)	RM No. 8610
Establishment of Rules and	)	PP-24
Policies for the Digital Audio	)	PP-86
Radio Satellite Service in the	)	PP-87
2310-2360 MHZ Frequency Band	)	

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REPLY COMMENTS

The National Association of Black Owned Broadcasters, Inc. ("NABOB"), by its attorneys, hereby submits its Reply Comments in the above-captioned proceeding. The issues raised in this proceeding concerning the potential authorization of digital audio radio service ("DARS") pose a serious threat to the increase of radio station ownership by African American entrepreneurs, and indeed, threatens to reduce such ownership. Therefore, NABOB requests that the Commission consider thoroughly the issue raised herein, and refrain from authorizing any DARS service which will have a severe negative impact upon the financial viability of local terrestrial African American owned radio service. In support of its position, NABOB submits the following:

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I. NABOB HAS A SUBSTANTIAL INTEREST IN THIS PROCEEDING

NABOB is the trade association representing the interests of African American owned commercial television and radio stations, and cable television systems throughout the United States. In that capacity, NABOB has two principal objectives: (1) to increase the number of African American owners of communications facilities and (2) to improve the business climate in which they operate.

II. THE NATIONAL ASSOCIATION OF BROADCASTERS HAS DOCUMENTED THAT LOCAL TERRESTRIAL RADIO SERVICE WILL BE NEGATIVELY IMPACTED BY THE PROPOSED DARS

In its Comments submitted to the Commission in this proceeding, the National Association of Broadcasters ("NAB") summarized the results of three different surveys of the economic impact the proposed DARS will have on local and small market radio stations. Among the conclusions in those studies were:

Strategic Policy Research of six Small-town radio markets, based on interviews with local broadcasters, government official and representatives from private and public enterprise.

- Study participants believe that implementation of satellite DARS will necessarily compel additional efforts to economize on programming costs as audiences are further divided, and that, lacking adequate alternatives, communities will inevitably suffer some degradation in the local community services they currently receive to the detriment of the local community's ability to thrive and cohere as a special place.

- Satellite DARS will, to the extent that it succeeds, compel additional economizing efforts by local broadcasters. Those efforts will likely take the form of additional reliance upon satellite-delivered programming. We could well approach a situation where we, in essence, have two satellite distribution systems for radio broadcast programming -- one which delivers geographically undifferentiated programming directly to consumers and the other which delivers similar programming indirectly to consumers via local broadcast outlets. The logic of competition appears almost to compel that result.

- The Commission may well decide that the benefits of satellite DARS, suitably conditioned, are worth any costs in terms of losses in diversity from the degradation of local radio service. In making this decision, it should not labor under the delusion that there is are no such costs.

<u>Kagan Media Appraisals, Inc. Study on the economic impact of DARS on local radio stations</u>.

- The impact of the economic effects on local radio from DARS could be devastating to the quality of the vital community service it provides to listeners and the local advertising community.

- The impact of the onslaught of DARS signals would be such that existing local stations would incur severe economic hardship -- hardship that would place their survival, let alone continued locally-responsive radio service -- in great peril.

- The impact of only one new DARS service could fragment radio audiences severely enough that traditional radio would no longer by profitable.

- While the impact of a proliferation of DARS programming sources might be shouldered by the largest market stations with the strongest financial resources, the onslaught of new services would likely be devastating to smaller market local radio operations.

Miller, Kaplan, Arase & Co. financial evaluation of the impact of revenue losses on individual stations in nine specific small markets.

- With a 10% loss of revenues (from a DARS-induced 10% audience diversion), approximately two-thirds of the 53 small market station operations evaluated went from achieving a comfortable profit to becoming marginal operations.

- Of the nine markets examined, only two markets had an average positive net income after the 10% revenue reduction, where seven of the nine started with positive net incomes.

- After the 10% reduction, seven of the nine markets examined wind up with more than half of the operations losing money.

NAB Comments at 6-7 (emphasis omitted).

NABOB therefore, supports the Comments filed by NAB requesting that the Commission refrain from licensing DARS. In addition, NABOB supports NAB's proposal that, if the Commission creates DARS, it should be: (1) licensed only on a non-broadcast, subscription basis, (2) required to meet a promise versus performance public interest obligation, and (3) the spectrum should be reopened for new applicants before any systems are licensed.

As shall be explained below, the results of the NAB studies are particularly significant as they relate to African American broadcasters.

III. DARS WILL HAVE A NEGATIVE EFFECT UPON THE ABILITY OF AFRICAN AMERICAN OWNED RADIO STATIONS TO CONTINUE TO SERVE THE PUBLIC

The studies provided by NAB demonstrate that the stations most likely to suffer a substantial loss of revenues to DARS competition will be small stations. This evidence demonstrates that minority owned stations will be disproportionately hard hit by DARS competition because minorities, in general, tend to own smaller stations.

The ownership of smaller stations by African Americans is directly attributable to the late entry of African Americans and other minorities into station ownership. Barred from station ownership by both de jure and de facto discrimination during the pioneering days of radio ownership in the 1920's, 30's and 40's the first African American station did not go on the air until 1949. At the time NABOB was founded in 1976, there were only 30 African American owned radio stations in the U.S., comprising less than 1% of all stations then operating in the U.S. Today, there are approximately 178 African American owned stations in the U.S., constituting less than 2% of the stations now operating.

The recent acquisition of these stations means several things.

African American owners, because they have not owned their stations long in comparison to other owners, have a greater amount of purchase debt still remaining to be paid on their stations. In addition, because they are often purchasing "entry level" stations, the stations owned by African Americans are likely to have facilities which are not comparable to the facilities of the dominant stations in their markets. For example, in comparison to the rest of the industry, African Americans own a disproportionate number of standalone AM stations and daytime AM stations.

Therefore, the industry studies provided by the NAB paint a very troubling picture with respect to the potential impact of DARS on African American ownership of radio stations. In particular, the analysis, done by Miller, Kaplan, Arase & Co., showing the impact of a 10% loss in gross revenues due to audience diversion caused by DARS is very telling. The Miller, Kaplan study reports that, with a 10% loss in revenues, "approximately two-thirds of the 53 small market station operations evaluated went from achieving a comfortable profit to becoming marginal operations." NAB Comments at 7.

The Miller, Kaplan study demonstrates a negative impact upon stations already "achieving a comfortable profit." For the most part, African American owned stations are not currently "achieving a comfortable profit." For the reasons described above, most recent African American owners are paying off large acquisition debts and have not arrived at the position of "achieving a comfortable profit." Therefore, the impact of DARS will be much more severe for the average African American radio station owner than for the average nonminority owner.

This potential, uniquely disproportionate impact on African American ownership strongly suggests that the result of the licensing of DARS will not simply be to place additional pressure on African American ownership. DARS has the potential for substantially reducing the growth of African American ownership of radio and may cause a substantial decline in such ownership.

The Commission should take particular note of this point because it ties in directly with the comments NABOB has filed in several different contexts over the last several years. The Commission's decision to allow the creation of radio duopolies and LMAs is already eroding African American ownership and causing a substantial consolidation of ownership in the industry. NABOB has requested that the Commission conduct a study of the effect on minority ownership of radio duopolies and LMAs. The Commission has not responded to this request.

The Commission will clearly exacerbate the erosion of African

American ownership of radio stations if the Commission proceeds with the licensing of DARS systems without conducting a study of the effect of the current duopoly rules and the proposed DARS rules on minority ownership.

IV. CONCLUSION

NABOB requests that the Commission refrain from creating the proposed DARS, and, at a minimum, prior to licensing the proposed new service, conduct a study of the potential impact on minority ownership of the proposed DARS.

Respectfully submitted,

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